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ADMINISTRATIVE TRIBUNAL

Judgement No. 833

Case No. 901: TLATLI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Samar Sen, Vice-President; Mr. Julio Barboza;

Whereas on 26 February 1994 Khaled Tlatli, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, extended the time limit for the filing of an application to the Tribunal until 31 December 1995;

Whereas, on 5 December 1995, the Applicant, after making the necessary corrections, again filed an application to which he added amendments dated 14 May 1996 requesting the Tribunal, *inter alia*:

"(a) To declare null and void the so-called administrative decision of 13 December 1993 not to renew the Applicant's contract ...;

(b) To declare that staff rule 109.7 is not consonant with staff regulation 9.3 (a);

(c) To order that all necessary legal, administrative or other steps should be taken in order to:

(i) Reinstate the Applicant in his former functions and restore his dignity; or failing that

(ii) Award him compensation equal to at least three years' remuneration (including salary, allowances, subsidies and other benefits);

(d) To award the Applicant, as damages, a sum equivalent to US$ 100,000."

Whereas the Respondent filed his answer on 24 June 1996;

Whereas the Applicant filed written observations on 26 August 1996;

Whereas the facts in the case are as follows:

The Applicant, a Tunisian citizen, joined the Organization on 1 November 1976 as an Information Assistant with the United Nations Information Centre (UNIC) in Tunis, for a one-year fixed-term appointment at the G-8/IV level. That appointment was subsequently renewed for further fixed-term periods until 31 December 1993. On his performance evaluation report (PER) for the period 1 August 1990 to 30 November 1992, the Applicant received 14 "A"s (Excellent) on the individual ratings for items 1 through 12, and for written and oral expression in Arabic (his mother tongue) and French. He received a "C" (Good) for written and oral expression in English. His overall performance rating was "an excellent performance". The Applicant's supervisor, the Director of UNIC, commented that "[the Applicant was] a staff member of high professional calibre. He continues to show excellent abilities in performing his functions, with a great devotion and dedication to the United Nations".

In the Applicant's 1 December 1992 to 1 November 1993 PER, he received an "E" (Somewhat below standard) for item 1, an "F" (Unsatisfactory) for items 2 through 12, an

"A" (Excellent) for written and oral expression in Arabic and French, and a "C" (Good) for English. His overall rating was "an unsatisfactory performance". His supervisor stated that "the reason for this rating is evidently because of the staff member's misconduct, unprofessional attitude, non-performance of duty and continuous absence during most of the reporting period". The PER was not signed by the Applicant because he was on sick leave.

On 31 March 1993, the Director of UNIC, Tunis, informed the Chief, External Relations Service, (ERS), Promotion and External Relations Director, (PERD), Department of Public Information (DPI), that the Applicant, who had purchased the Centre's old vehicle under a bid process, had not transferred title to himself, and had continued to drive the car with the diplomatic plates issued to the Centre. The Applicant then informed the Director "that he had followed the proper procedures and had paid customs for the car and had registered it with a Tunisian plate, as was required for citizens, under Tunisian law". The Director maintains that when he asked the Applicant to hand over the registration card of the vehicle, the Applicant "declined to do so claiming first that the card along with the sale contract were lost then saying that they were inside the file which he submitted to the Custom Department on personal basis".

On 2 April 1993, the Director of UNIC informed the Chief, ERS/PERD/DPI, of tense relations between the Applicant and the Centre's Senior Administrative Assistant, which since the Director's annual leave at the end of 1992, had begun to "affect the whole staff".

On 21 April 1993, the Personnel Officer, Office of Human Resources Management (OHRM), informed the Chief, ERS/PERD/DPI, of the results of her review of the conduct of the Applicant. She noted the "excellent ratings for working relations and effectiveness in supervision" prepared by the Director in the latest evaluation report dated 30 November 1992. She stated that it was "difficult to reconcile these assessments with [the Director of UNIC's] statement that [the Applicant's] unfriendly relationship with [the Senior Administrative Assistant] has created, ... a very tense situation at the Centre". However, in

case the Director of UNIC, Tunis should later decide to recommend the non-renewal of the Applicant's current appointment, he should continue "to place on record his dissatisfaction with [the Applicant's] conduct".

On 19 May 1993, the Director informed the Chief, ERS/PERD/DPI, by memorandum, that the Applicant's continuous absence had "jeopardize[d] the Centre's work". The Director enclosed a medical certificate from the United Nations physician which stated that the Applicant's state of health required "rest and care, without complications".

On 4 June 1993, the Chief, ERS/PERD/DPI, responding to the Applicant's 12 May 1993 memorandum, informed the Applicant "that the complaints made about [the Applicant's] unsatisfactory attitude and performance [were] very serious and that [he was] hereby warned that further administrative action may be taken against [him if he did not improve his] performance".

On 7 June 1993, the Applicant complained to the Chief, ERS/PERD/DPI, that "on the occasion of a meeting of the Secretary-General with the United Nations staff in Tunisia [he had been] denied access by the security services, acting according to their statements upon formal instructions of ..., Director of UNIC, Tunis." He also called for "an on-the-spot inquiry to establish the facts and take the necessary action".

On 14 June 1993, the Director of UNIC, Tunis, presented his version of what occurred. He stated that he could not have prevented the Applicant from attending the meeting. However, it had been brought to his attention later that "upon the arrival of the Secretary-General's convoy at the UN building, [the Applicant], who was staying in his private vehicle for almost two hours, tried to step out and approach the Secretary-General's group. He ... was stopped by Tunisian Security forces in the area and by the security elements accompanying the Secretary-General".

On the same date, the Assistant Secretary-General, DPI, instructed the Deputy Executive Officer to proceed to Tunis and investigate the performance of the Applicant and the "allegations of abuse of privilege and misconduct" on the part of the Applicant. On that

occasion, he was to meet with the Applicant to make him aware of the allegations being made against him, and to inform the Applicant that he could make a statement if he wished, but was not required to do so.

On 24 June 1993, the Director of UNIC, Tunis informed the Applicant that his continued uncooperative behaviour and his unfriendly and uncollegial attitude towards the Centre's staff would not contribute to the return of the normal conduct expected of a United Nations staff member. The Applicant was urged to improve his performance and conduct.

On 10 December 1993, the Deputy Executive Officer submitted his report on his investigation to the Officer-in-Charge, DPI, in which he concluded that the Applicant failed to meet the high standards of an international civil servant with regard to his performance. In addition, the Deputy Executive Officer recommended that "the Appellant's current fixed-term appointment which expire[d] on 31 December 1993, not be extended".

On 13 December 1993, the Chief, ERS/PERD/DPI, informed the Director of UNIC of the decision not to extend the Applicant's fixed-term appointment.

On 15 December 1993, the Director of UNIC, Tunis, forwarded the memorandum dated 13 December 1993 and the "separation memorandum" to the Applicant.

On 1 February 1994, the Applicant requested an administrative review of the decision not to renew his appointment.

The Applicant appealed to the Joint Appeals Board (JAB) on 25 April 1994.

The Board adopted its report on 10 August 1995. Its considerations and recommendation read as follows:

> "27. The Panel, after carefully examining the voluminous material submitted by the Appellant and by the Administration nevertheless, felt that it had not been provided with a clear picture of the reasons which had led to a staff member who for more than 15 years of continuous service had received outstanding performance reports in essentially the same function, to be suddenly found to be totally unsatisfactory during the last year or so of his service.
>
> 28. Despite a number of instances cited where the Appellant's behaviour, in the

eyes of his supervisor, was inexcusable, these incidents in themselves offered no satisfactory explanation of the radical deterioration in performance alleged to have taken place. While views might differ on the gravity of the instances cited, e.g. failure to return diplomatic license plates on a car purchased privately, the attempt to meet the Secretary-General on his visit to Tunis, they did not, even if judged in the most unfavourable light, account for the radical reversal in the Appellant's relation to his duties and to the UN, which the Director of UNIC claims had taken place.

29. The only plausible answer to this puzzling question, which the Panel could extract from the evidence submitted, were the Appellant's lengthy absences from work, on medical grounds. These amounted to nine months in all during the last year of his service. The Director of UNIC cites them as one of the reasons for which he urges non-renewal of the Appellant's employment. Yet, nowhere in the files is there any evidence that the issue of the Appellant's state of health had been referred to the UN medical consultant. The special investigator sent from NY, although he witnessed what can only be described as a nervous breakdown, did not suggest that this be done.

30. The Panel took note of the fact that in situations where there is reason to believe that a separation is warranted on medical grounds the first step to be taken is the referral of the question to the medical consultant, who would then advise whether such a separation is warranted. If so, the case would have to be referred to the UNSPC for the possible award of a disability benefit.

Recommendation

31. As there is evidence that the Appellant's deterioration in performance may have been due to medical reasons, and there was a failure to determine whether it was so, the JAB unanimously recommends that the administration explore the possibility of doing so now. The JAB will, if necessary, revert to the appeal in the light of the results of that exploration. Pending its outcome, the Panel takes no decision at this time regarding the other issues of this case."

By letter dated 7 November 1995, the Applicant was informed in the following terms that the Secretary-General had decided, in the light of the report of the Board, to maintain the contested decision:

"The Secretary-General has examined your case in the light of the Board's

report and has decided to accept its recommendation, under the following terms. You will obtain from your physician(s) a detailed medical report describing fully your health condition as of the end of December 1993, including a prognosis. This medical report shall be sent within 60 days following receipt of this letter, to the attention of Dr. Ingrid Laux, Medical Director of the United Nations, in New York City. Following the analysis of this medical report, the Medical Director will either refer this case to the UNJSPF for a disability benefit decision, or if some medical aspects remain contentious, refer the medical report to a Medical Board to determine if you were fit for service as of 31 December 1993. In light of the results, the Secretary-General will thereafter decide on the opportunity to revert again to the Joint Appeals Board.

The above-mentioned decision of the Secretary-General is 'the final decision on the appeal' mentioned by staff rule 111.2 (o). Therefore, any recourse should be addressed to the Administrative Tribunal."

On 29 February 1996, the Secretary-General informed the Applicant, on the basis of the opinion of the United Nations Medical Director, that:

"[His] official status file [would] be corrected to indicate that [the Applicant] was on sick leave with full pay until 30 June 1994 and, on that account, [he] would be reimbursed forthwith any amount still owed to [him]."

On the other hand, the Secretary-General stated that:

"The Medical Director has not found any medical condition to justify an extension of sick leave beyond that date [30 June 1994] nor for a referral to [the United Nations Joint Staff Pension Fund] for a disability benefit."

On 5 December 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The reasons which led to the non-renewal of the fixed-term appointment are extraneous to the case.

2. The procedure which led to the non-renewal of the fixed-term appointment is defective.

Whereas the Respondent's principal contentions are:

1. The Applicant has the right to appeal the decision to award him sick leave confined to a period of six months beyond the date of separation from service.

2. The Applicant's fixed-term appointment does not entitle him to count on an extension.

The Tribunal, having deliberated from 4 July to 1 August 1997, now pronounces the following judgement:

I. The Applicant, of Tunisian nationality, born in 1937, entered United Nations service in 1976. He had previously been a journalist, and was recruited to the Information Centre in Tunis, where his entire career took place under successive renewals of fixed-term contracts. Mr. Tlatli's work was very highly appreciated, as is apparent from many letters of commendation, as well as from the performance evaluation reports on him, at least up until 1992.

In the course of 1993, a combination of circumstances seriously affected the Applicant's situation: his relations with the Director of the Centre deteriorated seriously, and were marked by various incidents, one of which related to the Applicant's failure to return official vehicle licence plates being used on his private vehicle. At the request of the Director of the Centre, an investigation into the conduct of the Applicant was conducted by the Deputy Executive Officer, DPI, but the report resulting from this investigation was not communicated to the Applicant. The Respondent rightly acknowledges that as this report was not communicated to the Applicant, it cannot be used against him. Likewise, a performance evaluation report on the Applicant's services in 1993 was drawn up by the

Director of the Centre, and again was not brought to the attention of the Applicant. In addition, during this same year of 1993 the Applicant underwent a serious operation and was absent from the Information Centre for nine months on health grounds.

II. By a transmission of communication dated 13 December 1993, the Director of the Information Centre informed the Applicant that the Officer-in-Charge, DPI, had decided not to extend his contract upon its expiry on 31 December 1993. This communication was worded as follows:

> "Based on the performance and conduct of [the Applicant], and taking into consideration the conclusions of the investigation report which has been forwarded to OHRM, the Officer-in-Charge of DPI has decided not to extend the fixed-term appointment of [the Applicant] when it expires on 31 December 1993.
>
> Please make a copy of this communication and have it delivered by hand to [the Applicant] in person or to his residence. Although it is not necessary to give prior notice not to extend a fixed-term appointment, which does not carry any expectation of renewal, please ensure that this is given to [the Applicant] without delay and in any event before 31 December 1993.
>
> Please let me know the manner in which the communication was delivered and when."

This text refers to the conduct of the Applicant, and makes no mention whatsoever of the state of his health. It appears to be situated in the context of the tense relations between the Director of the Centre and the Applicant. It is against the decision not to renew his contract that the Application is directed.

The JAB strongly indicated that it found it surprising that the services of the Applicant, which had been judged highly satisfactory for more than 15 years, should suddenly have deteriorated to the point of justifying non-renewal of his contract. In the Board's view, only the state of the Applicant's health could afford an explanation. For that

reason, the Board, without taking a decision regarding the non-renewal of the contract, expressed the desire that the Applicant's case should be referred to the United Nations Medical Director. This recommendation was accepted by the Secretary-General, and it was recognized that the Applicant was entitled to be placed on sick leave up until 30 June 1994. He did indeed receive his salary up until that date. However, the non-renewal of his contract was not questioned by the Administration.

As indicated above, the application is directed against the initial decision not to renew the Applicant's contract, but it also extends to the decisions of 7 November 1995 and 29 February 1996 regarding the medical prolongation of his association with the United Nations. The Secretary-General, in a letter dated 29 February 1996, informed the Applicant that he could request the constitution of a medical board if he felt that some medical aspects of his situation remained contentious. The Tribunal considers that it is for the Applicant to have recourse to this procedure if he deems it appropriate, and should he do so, the Respondent is obliged to accede to his request. In this way, the Applicant's medical condition at the time of the non-renewal of his contract could be fully clarified, *inter alia*, from the standpoint of his possible entitlement to a disability benefit.

III. The Tribunal considers, moreover, that the procedure subsequent to which the Applicant's contract was not renewed was deficient in a number of respects. It appears surprising that the decision not to renew his contract should have been taken on grounds relating to his conduct without his state of health being taken into account or mentioned in the communication of 13 December 1993. It is no less surprising that the report which resulted from the investigation conducted in relation to the Applicant, as well as the performance evaluation report on his services in 1993, were not communicated to him. The facts relating to the relations of conflict between the Director of the Tunis Centre and the Applicant remain unclear. Lastly, as noted by the JAB, the many years for which the Applicant performed services that were found highly satisfactory argue in his favour, while

the reasons for the deterioration in his performance of which he is accused are not clearly apparent.

While recognizing that staff members have no entitlement to renewal of fixed-term contracts, the Tribunal nevertheless considers that the combination of circumstances surrounding the non-renewal of the Applicant's contract appears to reveal conduct irreconcilable with good administration. The harm sustained calls for compensation.

IV. For the foregoing reasons, the Tribunal:

(a) Requests the Secretary-General to provide for the medical condition of the Applicant at the time of his separation from service to be reviewed by the competent bodies (the United Nations Joint Staff Pensions Committee), should the Applicant so request;

(b) Orders the Respondent to pay to the Applicant an indemnity in the amount of one year's base salary at the rate in force on the date of his separation from service.

(Signatures)

Hubert THIERRY
President

Samar SEN
Vice-President

Julio BARBOZA
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary